Sidney Dietz
Director
Regulatory Relations

Pacific Gas and Electric Company
77 Beale Street, Mail Code B13U
Post Office Box 770000
San Francisco, CA 94177

Fax: 415-973-3582

June 15, 2021

Ms. Caroline Thomas Jacobs
Director, Wildfire Safety Division
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, California 94102

Re: Wildfire Safety Division's Proposed Changes to the 2021 Safety Certification Guidance Pursuant to Public Utilities Code § 8389(f)(2)

Dear Ms. Thomas Jacobs:

Pacific Gas and Electric Company ("PG&E") respectfully submits the following reply comments regarding the Wildfire Safety Division's ("WSD") May 11, 2021 Proposed Changes to the 2021 Safety Certification Guidance Pursuant to Public Utilities Code § 8389(f)(2) (the "Proposed Changes").

The comments submitted by various parties evince broad agreement on an important principle: The standards for issuance of a safety certification should be clear and not subject to discretionary judgment calls. This should not be controversial, for a primary purpose of AB 1054's safety certification regime is to promote utility financial stability, so as to ensure access to the "capital [that is necessary] to fund ongoing operations and make new investments to promote safety, reliability, and California's clean energy mandates."[1] This is why the statute provides a clear, readily applied standard for assessing "good standing": "[G]ood standing . . . can be satisfied by the electrical corporation having agreed to implement the findings of its most recent safety culture assessment, if applicable."[2] And this is also why the safety certification requirements do not contemplate an assessment of compliance with a utility's approved wildfire mitigation plan ("WMP"), but instead simply ask whether the utility "is implementing" its plan.[3] The statute leaves compliance and enforcement to other portions of the overall regulatory regime.

[1] 2019 Cal. Legis. Serv. Ch. 79 (A.B. 1054) § 1(a)(4).

[2] Pub. Util. Code § 8389(e)(2).

[3] *Id.* § 8389(e)(7).

Some parties nevertheless propose to layer on all manner of criteria that have no basis in the statutory text, and indeed, would contravene the statute and therefore be invalid. These parties' proposals, if adopted and not immediately struck down by the courts, would be profoundly destabilizing, thereby undermining the progress achieved by AB 1054. These parties' proposals should be rejected, and WSD should adhere to the straightforward standards set forth in the statute.

A. There Is Broad Consensus That The Standard For "Good Standing" Should Be Clear and Not Subject to Discretionary Judgment Calls

As PG&E showed in its opening comments, AB 1054's requirements for a safety certification are designedly straightforward, focused on current structure and forward-looking commitments.[4] They are not onerous, opaque, or uncertain. They do not contemplate any sort of retrospective compliance review. They do not envision assessments of safety history. They leave all such matters to other statutory provisions and other portions of the overall regulatory regime.[5] In short, the statutory criteria for a safety certification lend themselves to ready and transparent application, and to predictability rather than unpredictability. As explained in PG&E's opening comments, this is by design, for the capital markets require such predictability.[6]

Several parties have submitted comments recognizing as much, and emphasizing how critical it is that the standard for "good standing" be clear and not subject to discretionary or unpredictable judgment calls. The Public Advocates Office ("CalAdvocates"), for example, argues that the standards for a safety certification should be "eas[y] to understand and to implement," and that "clear criteria for determining whether the requirements of Public Utilities Code Section 8389 have been met will benefit both the utilities and stakeholder parties."[7] CalAdvocates points out that it would be counterproductive "to leave the determination of 'good standing' largely up to the WSD's discretion."[8] Similarly, the Coalition of California Utility

---

[4] *See* PG&E's June 1, 2021 Ltr. to WSD ("PG&E's Opening Comments") at 3-4, 9.

[5] *See, e.g.*, Jan. 14, 2021 Ltr. from WSD Issuing 2020 Safety Certification to PG&E at 2 ("The WSD's issuance of [a] safety certification is separate from the Commission's enforcement authority and does not preclude the Commission from pursuing remedies for any conduct on the part of [a utility]."); Pub. Util. Code § 8389(g) ("If the division determines an electrical corporation is not in compliance with its approved wildfire mitigation plan, it may recommend that the commission pursue an enforcement action against the electrical corporation for noncompliance with its approved plan."); *id.* § 3292(h)(3)(A) (providing that the cap on an electrical corporation's obligation to reimburse the Wildfire Fund that ordinarily applies if the electrical corporation has a safety certification does *not* apply "[i]f the administrator [of the Wildfire Fund] determines that the electrical corporation's actions or inactions that resulted in the covered wildfire constituted conscious or willful disregard of the rights and safety of others"); *see also* Decision Approving Reorganization Plan of PG&E and PG&E Corporation, D.20-05-053, at Appendix A (June 1, 2020) (setting forth an Enhanced Oversight and Enforcement Process for PG&E that can go into effect upon certain triggering events).

[6] *See* PG&E's Opening Comments at 7-9.

[7] CalAdvocates' June 1, 2021 Ltr. to WSD ("CalAdvocates' Opening Comments") at 1-2.

[8] *Id.* at 3.

Employees observes that a lack of "clear standards" would amount to "a moving target that will be difficult for electrical corporations to satisfy even when [they are] taking reasonable steps to improve and prioritize safety."[9] Southern California Edison Company ("SCE") agrees, pointing out that the "requirements [for a safety certification] are precise and do not involve discretionary judgments," and that "[c]hanging the [AB 1054] deal midstream will cause confusion and uncertainty and will undermine a principal objective of AB 1054 to promote electric corporations' financial stability in light of California's strict liability regime and the increasing threat of catastrophic wildfires to communities."[10] And San Diego Gas & Electric Company ("SDG&E") likewise observes that "[t]he statute provides clear, straightforward, and easily applied criteria," and that "[t]he clarity and consistency of the requirements for a Safety Certification provide the stability necessary to support the credit worthiness of the utilities and allow them a mechanism to attract the capital for investment in safe, clean, and reliable power for California."[11]

Missing from several parties' comments, however, is any recognition of the fact that the statute *already* supplies the sort of clear, readily applied standard that parties acknowledge is necessary: "[G]ood standing . . . can be satisfied by the electrical corporation having agreed to implement the findings of its most recent safety culture assessment, if applicable."[12] The statute unequivocally *mandates* a finding of "good standing" if the electrical corporation fulfills the bright-line test of agreeing to implement the most recent findings. Nothing more is required, nor, under the plain language of the statute, is any additional or incremental requirement permitted. *See, e.g.*, *Assembly of State of Cal. v. Public Utils. Comm'n*, 12 Cal. 4th 87, 103 (1995) ("Past decisions of this court have rejected a construction of [Public Utilities Code] section 701 that would confer upon the Commission powers contrary to other legislative directives, or to express restrictions placed upon the Commission's authority by the Public Utilities Code."); *Southern Cal. Gas Co. v. Public Utils. Comm'n*, 24 Cal. 3d 653, 659 (1979) (statute authorizing the Commission to permit utilities to adopt a certain program did not authorize the Commission to require utilities to do so; "[t]he Legislature's express decision to enact a permissive program cannot reasonably be interpreted to have included an intent to allow the commission to institute mandatory programs under the general provisions of sections 701 and 702").[13]

B. Proposals For Assessing "Good Standing" Based On Non-Statutory Criteria Are Contrary To AB 1054 And Would Undermine The Progress It Has Achieved

Several parties propose to add requirements that would extend beyond the statutory language. In doing so, these parties seem to misapprehend the nature of a safety certification,

---

[9] Coalition of California Utility Employees' June 1, 2021 Ltr. to WSD at 3.

[10] SCE's June 1, 2021 Ltr. to WSD ("SCE's Opening Comments") at 2, 4.

[11] SDG&E's June 1, 2021 Ltr. to WSD ("SDG&E's Opening Comments") at 2-3.

[12] Pub. Util. Code § 8389(e)(2).

[13] As noted in PG&E's Opening Comments, the statutory standard operates as a "safe harbor," and does not foreclose other ways of showing "good standing." For example, if a utility exercises its right to contest a finding of the most recent safety culture assessment, it may be appropriate to assess good standing based on a utility's agreement to take other appropriate action in the future.

how it fits into the overall regulatory regime, and the import of WSD issuing a certification. The Utility Reform Network ("TURN"), for example, argues that WSD should treat the safety certification process as a "powerful tool to improve utility safety," that "[w]hether to approve safety certifications is one of the most important decisions that the Legislature has entrusted to WSD," and that the safety certification process should be a platform for assessing whether a utility has a "track record of unsafe behavior in any respect related to wildfire prevention and mitigation."[14] TURN then provides an entire page of bullet points that it says should constitute "minimum" and "additional" "criteria for the good standing requirement"—a proposal that is 22 times longer than the simple statutory test of whether "the electrical corporation ha[s] agreed to implement the findings of its most recent safety culture assessment."[15] TURN's comments imply that the exclusive purpose of a safety certification is to promote safety, and that issuing a certification constitutes some sort of WSD imprimatur on the safety of a utility's operations.

This is misguided. The safety certification process is just one narrow part of an overall regulatory structure, other portions of which are also focused on promoting safety. The safety certification regime is designed not only to "encourage[] electrical corporations to invest in safety and improve safety culture," but also to promote utility financial stability so as to "guard against impairment of their ability to provide safe and reliable service because of the financial effects of wildfires."[16] And issuance of a safety certification is not some sort of blessing of the safety of a utility's operations; it simply connotes that an electrical corporation has "provide[d] documentation"[17] of having satisfied a short list of discrete statutory criteria, such that the electrical corporation can obtain or potentially obtain certain specific legal benefits (namely, an effect on the burden of proof in wildfire cost recovery proceedings, and a potential cap on an electrical corporation's obligation to reimburse the Wildfire Fund).[18]

Moreover, TURN's laundry list of proposals is based on an additional premise that is, if anything, even more profoundly incorrect. TURN bases its proposals on the notion that "for 2021, WSD *will not be able* to rely on any safety culture assessments as a basis for determining whether the good standing requirement has been satisfied."[19] TURN says that "the good standing requirement can only be satisfied by *implementation* of the findings of a utility's safety culture assessment if such an assessment has taken place *and has been implemented*."[20] TURN says that "the timing of the annual WSD Safety Culture Assessments (SCA) pursuant to WSD-011 will not allow *implementation* of any findings before the due date for the safety certification

---

[14] TURN's June 1, 2021 Ltr. to WSD ("TURN's Opening Comments") at 1, 6.

[15] Pub. Util. Code § 8389(e)(2).

[16] 2019 Cal. Legis. Serv. Ch. 79 (A.B. 1054) §§ 1(b), 2(f).

[17] Pub. Util. Code § 8389(e).

[18] *See* Pub. Util. Code §§ 451.5(c), 3292(h). Even if an electrical corporation has a safety certification, the cap does not apply if "the administrator [of the Wildfire Fund] determines that the electrical corporation's actions or inactions that resulted in the covered wildfire constituted conscious or willful disregard of the rights and safety of others." *Id.* § 3292(h)(3)(A).

[19] TURN's Opening Comments at 2 (emphasis added, and capitalization removed).

[20] *Id.* (emphasis added).

requests," such that "SCAs pursuant to WSD-011 cannot serve as a basis for satisfying the good standing requirement."[21]

This flatly misreads the statute, which does not require "implementation" of the findings of a safety culture assessment. Rather, the statute unambiguously provides that "good standing . . . can be satisfied by the electrical corporation having *agreed* to implement the findings of its most recent safety culture assessment."[22] Under the statute, therefore, there merely needs to be a safety culture assessment plus enough time for an electrical corporation to agree to implement its findings. WSD's current proposal for the timing of the safety certification process would ensure that that is the case for 2021,[23] obviating TURN's stated justification for its extensive criteria.[24]

Moreover, TURN's proposed criteria, to the extent TURN intends them to apply even when a utility has agreed to implement the most recent safety culture assessment findings, would contravene the statute and therefore be invalid. *See Assembly of State of Cal.*, 12 Cal. 4th at 103; *Southern Cal. Gas*, 24 Cal. 3d at 659. TURN's proposals also would undermine AB 1054's purpose of promoting access to capital markets by making the criteria murky and subject to uncertainty, which is anathema to capital markets investors. TURN proposes, for example, that a finding of "good standing" be tied to the results of fire investigations, the views of a "federal monitor or other safety monitor," "audit or other investigative findings," and the like.[25] As explained in PG&E's Opening Comments, these sorts of criteria are of a different character from what the Legislature saw fit to impose, and would further set the market on edge about the financial viability of California utilities.[26]

CalAdvocates' comments also are problematic in certain respects. CalAdvocates, similar to TURN, opines that "[t]he purpose of safety certifications is to ensure that each investor-owned utility demonstrates a commitment to safety throughout its organization."[27] CalAdvocates evinces no regard for the fact that a purpose of a safety certification *also* is to promote utility

---

[21] *Id.* (emphasis added).

[22] Pub. Util. Code § 8389(e)(2) (emphasis added).

[23] PG&E shares SDG&E's concerns about WSD's proposed timeline for the safety certification process. (*See* SDG&E's Opening Comments at 6-8.) Regardless, the 2021 safety culture assessment process is well underway, and there should be no issue with that process being completed and utilities having time to agree to implement the findings prior to WSD acting on 2021 safety certification requests.

[24] *See* Proposed Changes at 2-3. In any event, in PG&E's case, PG&E has had a safety culture assessment conducted by NorthStar Consulting Group ("NorthStar"), and PG&E agreed to implement all of those findings. TURN argues that NorthStar's assessment does not "count" on the theory that its comprehensive assessment took place in 2017 and was updated in 2019, rather than more recently. TURN previously made this argument (even though the statute imposes no temporal limitation on safety culture assessments), and WSD appropriately rejected the argument in issuing PG&E its 2020 safety certification. As WSD noted, "PG&E agreed to implement" NorthStar's recommendations, and PG&E "therefore satisfie[d] §8389(e)(2)." (Jan. 14, 2021 Ltr. from WSD to PG&E at 7-8.)

[25] TURN's Opening Comments at 4.

[26] *See* PG&E's Opening Comments at 9-10.

[27] CalAdvocates' Opening Comments at 2 (footnote omitted).

financial stability and access to capital. And although CalAdvocates correctly argues that it would be inappropriate to adopt "criteria [that] leave the determination of good standing largely up to WSD's discretion," CalAdvocates errs when its contends that, nevertheless, WSD should evaluate "good standing" based on "the finding of fault by a state agency, a significant number of inspections that did not meet internal utility targets, violations of rules and requirements of the California Public Utilities Commission . . . , or violations of General Orders."[28] Again, any such additional requirements would be contrary to the clear standard set forth in the statute (at least, if the utility has agreed to implement the findings of its most recent safety culture assessment), and therefore would be invalid. Further, such proposed criteria are beyond the realm of what the statute requires for a safety certification, in that they are compliance-focused. That decidedly is not the focus of the safety certification requirements, nor should it be in light of the narrow purpose of the safety certification regime.

To the extent parties' demands for more than the statute requires are driven by a worry that the statutory "agreed to implement" standard is toothless, it is not. After an electrical corporation agrees to implement the safety culture assessment findings, an entire process kicks off to ensure that it actually does so. Every quarter, the utility must file a Tier 1 Advice Letter "that details the implementation of . . . recommendations of the most recent safety culture assessment, and a statement of the recommendations of the board of directors safety committee meetings that occurred during the quarter."[29] The next quarter, the utility must file another Tier 1 Advice Letter that "summarize[s] the implementation of the safety committee recommendations from the electrical corporation's previous advice letter filing."[30] And "[i]f [WSD] has reason to doubt the veracity of the statements contained in the advice letter filing, it shall perform an audit of the issue of concern."[31] If it turns out the utility's statements lacked veracity, there are of course remedies for that.[32]

In short, the statutory standard for a finding of "good standing" is clear and unambiguous. If an electrical corporation has agreed to implement the findings of its most recent safety culture assessment, that is the end of the matter; there is no room for any additional criteria. The extent and effectiveness of subsequent implementation, compliance issues, and the like are left to other portions of the regulatory regime. To the extent parties seek to add requirements to the statute, WSD should reject those suggestions and adhere to the statutory text.

---

[28] *Id.* at 3.

[29] Pub. Util. Code § 8389(e)(7).

[30] *Id.*

[31] *Id.*

[32] *Compare* General Order 96-B, Rule 2 (providing that "Rule 1.1 ('Code of Ethics') of the Commission's Rules of Practice and Procedure . . . shall apply to all matters governed by these rules [*i.e.*, advice letter filings]"); *with* CPUC Rules of Practice and Procedure, Rule 1.1 ("Any person who signs a pleading or brief, enters an appearance, offers testimony at a hearing, or transacts business with the Commission, by such acts . . . agrees . . . never to mislead the Commission or its staff by an artifice or false statement of fact or law.").

C. Some Parties' Comments Regarding Implementation Of WMPs Are Contrary To AB 1054

PG&E shares SCE's and SDG&E's concerns regarding the Proposed Changes' discussion of the requirement of Public Utilities Code § 8389(e)(7) that "[t]he electrical corporation is implementing its approved wildfire mitigation plan." PG&E believes that, to the extent WSD is proposing to make this inquiry compliance-focused—as opposed to simply using materials generated during the compliance process to assess whether an electrical corporation "is implementing" its WMP—the proposal is contrary to the statute. As noted, the statutory criteria for a safety certification are not compliance-based, and indeed, the Legislature *rejected* compliance-based tests.[33]

Protect Our Communications Foundation nevertheless argues that, in light of what it calls "the utilities' history of noncompliance . . . , WSD must hold the utilities accountable."[34] This misapprehends the narrow role of a safety certification, and ignores that the safety certification criteria are not compliance-based.

The comments of Mussey Grade Road Alliance ("MGRA") likewise miss the mark. MGRA seeks to add words to the statutory standard, arguing that "is implementing" should be read to mean "[is] *effectively* implementing."[35] That would violate basic canons of statutory interpretation. *See, e.g.*, *Burden v. Snowden*, 2 Cal. 4th 556, 562 (1992) ("Where the words of the statute are clear, we may not add to or alter them to accomplish a purpose that does not appear on the face of the statute or from its legislative history."); *Settle v. California*, 228 Cal. App. 4th 215, 217 (2014) ("We, like the server who cannot add or substitute entries on the menu, cannot add or substitute words in a statute."). It also would lead to precisely the sort of discretionary judgment calls that parties broadly seem to agree would be counter-productive, given the inherent nebulousness of "effectively." The statute eschews such vague standards; as long as a utility "is implementing" its approved WMP, the utility satisfies § 8389(e)(7).

That is not to say that there is no remedy for failure to effectively implement or to comply with an approved WMP. Of course there is. Similar to what AB 1054 requires with respect to implementation of safety culture assessment recommendations, the statute requires an electrical corporation to file "a tier 1 advice letter on a quarterly basis that details the implementation of . . . its approved wildfire mitigation plan."[36] The statutes permits WSD to

---

[33] *See* PG&E's Opening Comments at 4; Draft of AB 1054 at 86 (Feb. 21, 2019) (Ex. 1 to PG&E's Opening Comments) (rejecting language that would have required a utility to show "substantial compliance . . . with the findings of its most recent safety culture assessment"); Proposed Amendments to AB 1054 at 44 (June 27, 2019) (Ex. 2 to PG&E's Opening Comments) (same).

[34] Protect Our Communications Foundation's June 1, 2021 Ltr. to WSD at 3.

[35] MGRA's June 1, 2021 Ltr. to WSD; *see also* TURN Opening Comments at 5 (assuming that the standard is "whether the utilities are *sufficiently* implementing their WMPs") (emphasis added).

[36] Pub. Util. Code § 8389(e)(7).

audit those filings.[37] AB 1054 further requires the submission of annual compliance reports.[38] And it requires the use of independent evaluators "operat[ing] under the direction of[] the Wildfire Safety Division."[39] Ultimately, "[i]f [WSD] determines an electrical corporation is not in compliance with its approved wildfire mitigation plan, it may recommend that the commission pursue an enforcement action against the electrical corporation for noncompliance with its approved plan."[40]

In short, the "is implementing" standard under § 8389(e)(7), like the "agreed to implement" standard for "good standing," is designedly straightforward and readily applied, so as to promote utility financial stability and access to the "capital [necessary] to . . . make new investments to promote safety, reliability, and California's clean energy mandates."[41] WSD should resist calls to inject nebulousness and uncertainty into the statutory standard, which would undermine the goals of and progress achieved by AB 1054. Compliance and related issues are properly the subject of other portions of the regulatory regime, not the safety certification portion.

D. TURN's Procedural Proposals Lack Merit

TURN's procedural proposals are wholly unnecessary. TURN proposes that, once a utility applies for a safety certification, interested stakeholders have 30 days to submit comments (with the utilities required to respond in just 10 days), that there be data requests (with the utilities required to respond in just three business days), and so on.[42] TURN says this would be helpful because of what it says are numerous "judgment-based" issues, such as "whether the utilities are *sufficiently* implementing their WMPs."[43] But as set forth above and as other parties broadly seem to agree, the criteria for a safety certification are not—and should not be—fundamentally judgment-based. In any event, TURN's proposals are counterproductive; there already are opportunities for stakeholder comment in connection with approval of WMPs, with whether the utility's executive compensation structure adequately promotes safety, and with other components of the safety certification criteria.[44] Adding yet another layer of comments and data requests would yield little but delay in a process that is supposed to be straightforward. TURN's proposals should be rejected.

* * *

---

[37] *See id.*

[38] *See id.* § 8386.3(c)(1).

[39] *Id.* § 8386.3(c)(2)(B)(i).

[40] *Id.* § 8389(g).

[41] 2019 Cal. Legis. Serv. Ch. 79 (A.B. 1054) § 1(a)(4).

[42] *See* TURN's Opening Comments at 5.

[43] *Id.* (emphasis added).

[44] *See, e.g.,* Pub. Util. Code §§ 8386(d), 8386.3(a).

PG&E thanks WSD for its consideration of the foregoing comments. If PG&E can provide further information, please do not hesitate to contact me.

Sincerely,

/s/ Sidney Dietz

Director, Regulatory Relations

cc: R.18-10-007 Service List